



Spire

Occupational Health



A guide to workplace mediation

Looking after you.

A guide to workplace mediation

This is a guide to mediation and its role in transforming and resolving workplace conflicts, disputes and disagreements.

Whether you are considering using mediation within your organisation, or if you are preparing to engage in mediation as a participant, this guide will provide you with details of the role, process and its philosophy.

What is workplace mediation?

The overriding aim of workplace mediation is to restore and maintain the employment relationship wherever possible. The focus is on the parties working together to go forward, not determining who was right or wrong in the past.

It is a completely voluntary and confidential form of alternative dispute resolution. It involves an independent, impartial person helping two or more individuals or groups reach a solution that's acceptable to everyone. Mediators do not make judgments or determine outcomes – they ask questions that help the parties to uncover underlying problems for themselves, assist the parties to understand the issues and help them to clarify the options for resolving their difference or dispute.

It is a process which is conducted on a “without prejudice” basis. This means that anything that is referred to during mediation cannot be referred to in any legal proceedings and the mediator

cannot act as a witness in any formal or legal proceedings which may follow.

The process usually lasts one full day and creates a safe environment where the parties can communicate and work towards the restoration of a positive working relationship.

Mediation is only as effective as the participants want it to be. If they want to find a solution, they will find it. The mediator will do everything they can to help those involved to find a positive and constructive way forward.

The key stages of workplace mediation

Prior to mediation starting:

1. Referral – setting up the mediation
2. Making contact and gathering the information (normally by telephone)

The mediation day:

3. First pre-mediation meeting with the parties
4. Second pre-mediation meeting with the parties
5. Direct mediation (joint meeting and the exchange – including uninterrupted speaking time for each party)
6. Problem solving and reaching agreement

Each of these stages is explained in more detail in the following briefing sheets.

Making the referral: setting up the mediation

The aims of the referral:

1. To explore the concerns of the organisation in relation to a conflict or dispute between (or with) one or more of its employees;
2. To examine the background to the conflict;
3. To understand the causes and effects of the conflict in terms of the people involved, the current management action, the prevailing culture, the environment and the use of existing policies and procedures
4. To consider the suitability of mediation and;
5. To define logistical arrangements, costs and any requirements for reporting back

We would initially take enquiries by email, in person or over the telephone. After an initial discussion with the sponsor of mediation, we require a formal confirmation letter plus a completed referral form. Please note that we do not offer mediation without having a conversation with the sponsor of mediation to clarify our role and the employees' expectations.

What we will discuss when you are making the referral

In order to make a referral for mediation, the sponsor of mediation (typically the Director of HR or another authorised person) should consider:

- The reasons for the conflict
- Any action taken and the impact of this action
- The impact of the conflict on the team, the individuals and the organisation
- The involvement of other participants and how this has affected the conflict
- What the sponsor hopes to achieve from the process. This helps us establish our terms of reference

During the referral stage, we will examine the causes and effects of the conflict. The sponsor will consider how the conflict has developed and how it has been responded to.

Once the situation has been discussed, along with causes and effects of the conflict, we will consider the available options. If we determine that mediation is not appropriate in the current context, we will provide a range of potential alternatives. At the referral stage, we will discuss the logistics of offering mediation.

What we require during mediation:

A mediation suite in a neutral venue away from the workplace is highly recommended. A mediation suite should consist of three rooms:

- A comfortable room for meeting parties and undertaking joint mediation meetings
- Two smaller rooms to be used by the parties as waiting rooms and as small break-out rooms as required during mediation
- Access to refreshments

Some considerations during the referral stage:

- Can the participants engage fully and openly in the process?
- We will discuss issues relating to power and hierarchy, allegations of bullying, harassment, oppressive practices and discrimination. Issues of personal safety will be considered
- Are the participants willing and able to engage fully in all stages of mediation?
- The line manager is absolutely central to the ongoing success of the dispute resolution process and their involvement in the mediation will be discussed
- During the introductory meeting, each party has the right to be accompanied by a friend or representative. However, we discourage third party involvement in any later stages of mediation

- Mediation is a confidential process. This will be discussed in detail. You will be given a copy of the confidentiality agreement
- Meetings at the early stages of mediation will require a quiet room where we will not be disturbed. Someone should be responsible for booking rooms. Each room should have access to refreshments and be fully accessible for both mediators and the participants. We will discuss timescales at the referral meeting

If mediation is considered suitable, this guide will be forwarded to all parties prior to mediation. In addition, all parties are asked to complete a short questionnaire asking them to consider their personal goals for mediation which they are advised to complete and bring with them to the first meeting with the mediator. A senior manager or HR Officer should contact the participants to explain why they are proceeding with mediation and to make it clear that the process is an honest and genuine attempt to resolve the conflict. In our experience, the sooner we get a mutual commitment to mediation (from employees and employers), the greater the likelihood of subsequent success.

The first individual meeting

The first individual meeting, where the mediator meets each party separately, lasts approximately one hour.

The purpose of this meeting is:

1. To explain and clarify to the parties, the role of the mediator and the mediation process;
2. To consider the various elements of the dispute and the impact on the individuals involved;
3. To identify, through a process of active listening, the history of the situation as well as the participants' future needs and expectations;
4. To discuss participants' goals for mediation (goal for mediation questionnaire);
5. To agree a terms of reference for the mediation process which the participants are able to commit to

What is a mediator?

A mediator is an independent person who is invited into a conflict or dispute situation to work with the parties involved as they try to find a positive resolution to their situation. The mediator does not judge who is right or wrong, and does not blame the parties involved and does not tell people what to do.

The mediator listens carefully to what the parties say and asks a number of questions to allow parties to share information. The mediator helps the parties to address their current concerns and issues as well as their expectations and goals.

Throughout the mediation process, the mediator considers how to move the parties forward, and works with the parties involved to consider future needs, expectations and options.

The nature of workplace mediation

Mediation is a different way of resolving a dispute or a conflict. Mediation has a clear structure and it is underpinned by important values and principles:

Mediation is voluntary:

- Mediation is a safe and constructive way of speaking and listening
- Mediation encourages fair and equitable problem-solving with a focus on the future
- Mediation is confidential

Terms of reference for the mediation

These are discussed at the introductory meeting and will be reviewed throughout the mediation process. The core term of reference used by us to restore a positive and productive working relationship.

The role of representatives/advocates during mediation

Parties may bring a representative to the first introductory meeting, where the representative's role and involvement will be discussed. In general, representatives do not attend further meetings, except in exceptional circumstances.

Establishing a way forward

The introductory meeting will give each party the opportunity to discuss the issues as they see them, to find out more about mediation and, hopefully, to commit to the process. It is important that those involved realise that the mediation process is a useful tool to help amend the situation, and that each party will only get out of the process what they are prepared to put into it.

If you have any questions, concerns or issues following the introductory meeting, please let your mediator know.

The second individual meeting

The second pre-mediation meeting is relatively short. The purpose of this meeting is:

1. To explore, in detail, the issues raised at the first meeting and any additional issues from each participant's point of view
2. To facilitate, as required, the sharing of information, ideas and potential ways forward between each of the participants
3. To encourage each party to listen to the other's perspective and to assist with the development of trust, empathy, respect and understanding
4. To agree a way forward, including the preparation of the joint mediation meeting

An introduction to the second pre-mediation meeting

Well done! You have taken a very positive step forward by agreeing to discuss your concerns and issues with the other party involved in this situation. The other party has agreed to do the same, and each of you has now made a clear commitment to resolve the current situation through mediation.

The second meeting is the opportunity to prepare for the joint meeting. The second meeting is important for three key reasons:

- It prepares all parties for the difficult conversation ahead
- It allows the parties to 'test' what they want to say on a neutral person
- It gives the mediator the opportunity to map the issues and develop the agenda for the joint meeting

The role of the mediator during the second meeting

The mediator will listen carefully to each party and ask relevant and appropriate questions. This is known as active listening. The mediator does not judge what parties say and will work with each participant to prepare them for the joint meeting. Whilst the mediator will not disclose what the other party has said, they will identify areas of commonality and consensus.

The second meeting will also be used to 'reframe' challenging language and the mediator will help all parties construct what they want to say to one another.

Finally, the mediator will explain what happens at the joint meeting and will invite all parties to prepare what they want to say during their uninterrupted speaking time (also known as an opening statement).

The mediation joint meeting

The joint meetings generally take place in the afternoon of the mediation day.

The purpose of direct mediation is:

1. To establish a safe and structured environment where all participants involved in the dispute/conflict can meet one another to engage in open and honest dialogue
2. To evaluate all available options and ultimately to arrive at realistic, manageable and agreed outcomes
3. To develop an action plan and agreement about how best to work together and
4. To consider longer-term requirements and follow-up arrangements

An introduction to the joint mediation meeting

The joint mediation meeting is a carefully structured process which follows simple and effective guidelines. This by far is the most important stage of the mediation process. Entering into joint mediation

meeting clearly symbolises commitment towards a positive and realistic outcome to the current situation. This form of mediation can be challenging, and it can be challenging, frustrating, complex and tiring. By meeting one another and talking with honesty and openness about the situation however, you are making a real and sustainable contribution to the dispute resolution process.

The direct mediation process in detail

The mediator establishes a number of ground rules at the start of the session. These will include:

- Please try not to interrupt whilst others are speaking
- Listen to what people are saying
- Respect other people's points of view and their right to voice it
- Avoid shouting and abusive/threatening behaviour

After the ground rules have been agreed, each party will have the opportunity to tell their story. This is done during uninterrupted speaking time. It is important to prepare for this as it is not always easy to say what you want to say when you feel tense. Notes or bullet points can be helpful. You should try to speak for a maximum of five minutes, but you may take longer if necessary. Each party is given the same opportunity to speak and listen.

The role of the mediator during the joint mediation meeting

The mediator's role is to act as a facilitator, listen carefully, ensure that ground rules are adhered to, ask open questions, summarise what is said and generally lead the meeting in a positive manner whilst ensuring everyone's point of view is considered.

Time-outs

In some cases, the mediator may ask for the joint meeting to break into smaller one-to-one meetings. Such a break allows parties to take time out without interrupting the flow of the process. They may be called when:

- A difficult issue arises which requires personal and private consideration
- Mediators experience difficult or challenging behaviours
- One or both parties' requests space and time to think and reflect

The outcomes of the joint mediation meeting

There are no set formulae for how mediation should end. Every situation is different and what is needed may be different depending on the circumstances. It is important that parties have the opportunity to start talking again and that they agree what they want to happen in the future. What happens afterwards may include:

- An action plan to be monitored by parties for a specific time
- Future mediation involving other people or a whole team conference if there is conflict within a team
- An agreement or memorandum of understanding, outlining how the participants will interact in the future

Consideration of training and development issues or supervision and coaching needs.

Any outcome will be put in writing for participants to consider, keep and follow. We contact all parties at one, three, six and twelve months after mediation has concluded to establish how the case has progressed. We also offer a confidential telephone and email support service for one year after the mediation. This will be discussed during the joint meeting.



Appendix A

Workplace mediation – some FAQs

Who are the mediators?

Our workplace mediators are fully trained and work within exacting practice standards. Our mediators are members of the Professional Mediators' Association (PMA) and subscribe to their professional mediator practice standards and disciplinary code – available from professionalmediator.org

How long does mediation last?

Mediation generally lasts for one full day. However, in more complex cases or in cases involving more than two parties, it may last for up to two or three days.

Do mediators tell people what to do?

No. Mediators do not tell parties what to do. They do not judge who is right or wrong, nor do they impose a settlement or a solution.

Is mediation confidential?

Yes. Parties sign a confidentiality agreement at the first meeting. Mediators will not disclose anything that has been said during workplace mediation without the permission of the parties. If agreed by both parties, mediators provide a copy or a summary of the final agreement to the person who requested workplace mediation to enable them to continue to manage the situation. Mediators destroy all notes from mediation at the end of the process.

Other than a copy of the agreement, we do not keep any records of the day and mediators will not provide evidence at any process or employment tribunal.

Where does mediation take place?

Mediation takes place in a neutral location comprising of three rooms. Each party has their own private room for the entire day and there is a separate room for the joint meetings.

Is mediation voluntary?

Yes. Mediators ask parties whether they have entered into the process freely and voluntarily. We do not force, trick or coerce parties to engage in mediation.

Can I have someone with me during mediation?

Whilst we recognise that parties may wish to have someone with them, the mediators will create an environment where parties do not need anyone else to support them. If parties do wish to bring someone this is possible during the first individual meeting only, and that person must sign the confidentiality agreement.

Mediators do not encourage anyone other than the parties to be involved during the later stages of mediation.

Appendix B

What happens at the end of mediation?

Hopefully, parties will have reached a resolution to their dispute together with a number of points of agreement. These will be given to the parties (usually on the same day). We offer ongoing support and will contact all parties at one, three, six and twelve months after the mediation. In some cases, we also offer further mediation meetings if required. We will provide a contact point after mediation that all parties, their managers or HR officer can call if help is required to maintain the agreement.

I thought mediation was about us meeting each other. Why do mediators meet with the parties individually first?

Having separate meetings with the mediator gives all parties the opportunity to talk about the conflict from their point of view. The mediator listens to what each party says and explores how each party feels, what their concerns are, and what their underlying needs are.

Does mediation really work?

Yes. However, for mediation to work it requires a commitment from all parties. When parties enter into mediation with a willingness to listen and to respect each other, to challenge and to be challenged, and to seek a new way of working together, there is a good chance that mediation will work.

Mediator practice standards

- Our work is confidential. We will not give detailed feedback about what is covered during mediation unless all parties specifically request us to do so
- Mediation is wholly voluntary
- Mediators do not judge parties and do not assign blame or culpability
- Mediators ensure that they are well prepared for every mediation session
- Mediators are fully trained
- Mediators engage in a process of continued professional development and reflective practice



Spire
Occupational Health

Spire Occupational Health

3 Dorset Rise
London
EC4Y 8EN

Call 020 8295 8250
spireoccupationalhealth.com

3512031

SEQOHS
Safe Effective Quality Occupational Health Service



Looking after you.